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BEFORE THE
SURFACE TRANSPORTATION BOARD

EX PARTE NO. 706

PETITION OF UNION PACIFIC RAILROAD COMPANY
TO INSTITUTE A RULEMAKING PROCEEDING TO ADOPT
REPORTING REQUIREMENTS FOR POSITIVE TRAIN CONTROL

REPLY OF CANADIAN PACIFIC RAILWAY COMPANY IN SUPPORT OF PETITION TO INSTITUTE RULEMAKING PROCEEDING

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Canadian Pacific Railway Company and its U.S. carrier subsidiaries, Soo Line Railroad Company, Dakota, Minnesota and Eastern Railroad Corporation, and Delaware and Hudson Railway Company, Inc. (collectively, "CP"), respectfully submit this Reply in support of Union Pacific Railroad Company's Petition to Institute a Rulemaking Proceeding to Adopt Reporting Requirements for Positive Train Control (the "Petition"). CP strongly endorses UP's request that the Board institute a rulemaking proceeding to establish reporting requirements that will enable the Board to account accurately for the significant costs that railroads are incurring, and will continue to incur, in Positive Train Control ("PTC") technology. In order to comply with Congress' mandate that certain rail lines be equipped with PTC by December 31, 2015, CP and other railroads must invest substantial sums during the next several years to install PTC on the U.S. rail network. CP estimates that it will spend approximately $250 million to equip portions of its U.S. rail lines with PTC capability; and the total cost of PTC implementation for all Class I carriers is expected to approach $6 billion. Because accurate data relating to the cost of installing, operating and maintaining PTC will be relevant in a variety of regulatory contexts (including future rate proceedings involving toxic-by-inhalation ("TIH") or poisonous-by-inhalation ("PIH") commodities), the Board should adopt regulations that will allow for the collection and reporting of such data on a consistent basis.

I. RAILROADS ARE INCURRING SIGNIFICANT COSTS TO IMPLEMENT PTC.

The Rail Safety and Improvement Act of 2008, Pub. L. No. 110-432, § 104(a), 122 Stat. 4848, 4856-57 (2008), requires Class I railroads to install PTC by December 31, 2015 on all main lines over which (1) commuter or passenger transportation is provided and (2) TIH or PIH commodities are transported. PTC is envisioned as a measure to enhance system safety by stopping or slowing trains that are operating overspeed or in positions where there is a risk of accidents. Deployment of PTC requires considerable technological investments in a diverse range of equipment, including locomotive upgrades, wayside detectors, control center hardware and software, and sophisticated communications systems.[1] The Association of American Railroads has estimated that Class I railroads will spend approximately $5.8 billion on PTC implementation.[2]

CP will install PTC on portions of 28 of its 48 U.S. subdivisions. *See* Canadian Pacific Railway Company, Positive Train Control Implementation Plan (Revision 1.1) (Aug. 24, 2010)

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[1] "PTC systems are comprised of digital data link communications networks, continuous and accurate positioning systems such as NDGPS, on-board computers with digitized maps on locomotives and maintenance-of-way equipment, in-cab displays, throttle-brake interfaces on locomotives, wayside interface units at switches and wayside detectors, and control center computers and displays. PTC systems may also interface with tactical and strategic traffic planners, work order reporting systems, and locomotive health reporting systems. PTC systems issue movement authorities to train and maintenance-of-way crews, track the location of the trains and maintenance-of-way vehicles, have the ability to automatically enforce movement authorities, and continually update operating data systems with information on the location of trains, locomotives, cars, and crews." Federal Rail Administration, Positive Train Control, *available at* http://www.fra.dot.gov/pages/784.shtml.

[2] *See* Association of American Railroads, Positive Train Control (June 2010), *available at* http://www.aar.org/safety/~/media/aar/backgroundpapers/positivetraincontrol.ashx

at 1-10. This encompasses 2,736 route miles,[3] or approximately 69% of CP's 3,975 total U.S. network route miles. Virtually all of these 2,736 route miles are subject to the PTC mandate because they are used to transport TIH or PIH commodities; approximately 556 route miles also accommodate passenger operations. Therefore, nearly 2,200 route miles of CP's U.S. network will require PTC solely because those lines handle TIH or PIH traffic. CP handled approximately 17,000 TIH/PIH loads and residue empties over those lines in 2008. CP preliminarily estimates that the cost of implementing PTC on those lines will be $250 million.

II. PTC COSTS LIKELY WILL BE RELEVANT TO THE BOARD'S REGULATORY RESPONSIBILITIES.

As explained in the Petition, it is critically important for the Board to capture and preserve PTC-specific financial and operating data so that the Board has the ability to account accurately for railroads' significant PTC costs in future proceedings. *See* Petition at 5-6. To be clear, the Board does not need to decide in the proposed rulemaking precisely how it might use PTC data in future proceedings. However, the Petition should be granted because there is little question that data relating to the costs associated with PTC are likely to be relevant to the Board's ongoing regulatory responsibilities.

Recent experience shows how relevant PTC spending can be in Board proceedings. PTC spending was a major point of contention in *U.S. Magnesium, LLC v. Union Pacific R.R. Co.*, STB Docket No. 42114 – indeed, the Board's final decision on the PTC issue in that case turned largely upon its determination that it did not have sufficiently accurate data regarding UP's PTC costs. *U.S. Magnesium, LLC v. Union Pacific R.R. Co.*, STB Docket No. 42114, at 17 (served

[3] This total includes 355 miles for three subdivisions that are under evaluation to determine if they qualify for a *de minimus* exemption from PTC requirements.

Jan. 27, 2010). Recent SAC cases have also featured significant disputes about how to account for a stand alone railroad's potential PTC spending.[4]

The costs incurred by railroads to install, operate and maintain PTC technology undoubtedly will continue to be important issues in future proceedings. The relevance of PTC can be illustrated by reference to the facts about CP's PTC implementation discussed above. Fully 2,180 of the route miles on which CP is required to install PTC require that technology solely because CP transports TIH/PIH traffic over those lines. Since in 2008 CP handled only 17,000 carloads of TIH/PIH traffic, the ratio between annual TIH/PIH carloads and route miles requiring PTC because of those TIH/PIH carloads is only eight annual carloads per route mile. Simply put, CP will be required to make a substantial investment in PTC solely as a result of transportation of one segment of traffic – TIH/PIH commodities.

Under the Board's well-established policy against cross-subsidies, shippers should pay for costs that are directly attributable to the services provided to them. The Board has encouraged railroads to "recover costs from those that generate them." *North America Freight Car Ass'n v. BNSF Ry. Co.*, STB Docket No. 42060 (Sub-No. 1), at 6 (served Jan. 24, 2007); *see also Mr. Sprout, Inc. v. United States*, 8 F.3d 118, 127 (2d Cir. 1993) ("[R]ailroad accounting principles generally provide that costs should be recovered from the parties that generate them."). Consistent with that principle, PTC costs directly attributable to an identifiable segment of traffic ought to be recovered from shippers of that traffic. The Board should grant the Petition to ensure that it (and parties to future proceedings) have sufficient data to account for the full costs of TIH traffic in the Uniform Rail Costing System ("URCS") and to address the

[4] *See* Reply Evidence of CSX Transportation, Inc. at III-C-107 to 110, *Seminole Elec. Cooperative v. CSX Transp., Inc.*, STB Docket No. 42110 (filed Jan. 19, 2010); Joint Reply Evidence of BNSF Railway & Union Pacific R.R. at III.F-95 to F-96, *Arizona Elec. Power Cooperative v. BNSF Railway Co.*, STB Docket No. 42113 (filed May 7, 2010).

potential cross-subsidization of PTC implementation by non-TIH/PIH traffic in future rate reasonableness cases.[5]

As mentioned above, the Petition does not ask the Board to rule on the potential cross-subsidization issue with respect to PTC costs, nor does it ask the Board to determine precisely how it might address PTC costs in a future proceeding. Instead, the Petition asks only that the Board institute a rulemaking proceeding to establish appropriate reporting standards that will ensure that the Board has access to reliable data in future cases where PTC costs are at issue.

The Board should act promptly on UP's Petition and institute a rulemaking on PTC reporting requirements. In order to comply with Congress' December 31, 2015 deadline for PTC implementation, CP (and other rail carriers) must begin to make substantial PTC-related investments soon. If the Board does not establish regulations to facilitate the capture and reporting of such investments, those one-time implementation and capital costs will effectively be "lost" (or will be reported in URCS in a manner that does not allow for them to be assigned to the traffic that required carriers to incur them). While CP and other railroads will incur ongoing PTC-related costs after PTC technology is installed, a major portion of the overall cost of PTC will be spent over the next several years as railroads develop and install PTC technologies on their lines. The Board should adopt PTC reporting requirements expeditiously so that the information it compiles reflects total overall PTC costs as much as possible.

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[5] Several of the Three Benchmark cases filed since the adoption of *Simplified Standards for Rail Rate Cases*, STB Ex Parte No. 646 (Sub-No. 1) (Sept. 5, 2007), have involved TIH commodities, specifically chlorine. *See U.S. Magnesium, LLC v. Union Pacific R.R. Co.*, STB Docket No. 42114 (served Jan. 27, 2010); *E.I. du Pont de Nemours & Co. v. CSX Transp., Inc.*, STB Docket No. 42101 (served June 30, 2008). Costs associated with PTC will clearly be relevant to future rate cases involving TIH/PIH commodities.

III. THE PETITION'S SPECIFIC PROPOSALS FOR NEW REPORTING REQUIREMENTS.

The Petition sets forth several specific proposals for PTC-related reporting requirements. *See* Pet. at 11. These proposed reporting rules generally appear to be reasonable. If the Board grants the Petition and institutes a rulemaking proceeding, CP will comment further on UP's proposal, and may have additional comments and/or proposals regarding PTC-related reporting requirements.

CONCLUSION

For the foregoing reasons, CP requests that the Board grant the Petition and promptly institute a rulemaking proceeding to consider the adoption of reporting requirements for PTC-related costs.

Respectfully submitted,

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Dated: November 2, 2010

CERTIFICATE OF SERVICE

I hereby certify that I have caused a copy of the foregoing Reply Comments of Canadian Pacific Railway Company to be served by first class mail, postage prepaid, this 2nd day of November 2010 to all parties of record.

Matthew J. Warren